

REMARKS

Claims 11-16 stand rejected under 35 USC 103(a) on Sato. This rejection is respectfully traversed.

Independent claim 11 recites a method of manufacturing a semiconductor laser device. The method includes “subjecting the P-based layer to crystal growth at a first growth temperature; and above the P-Based layer, starting growth of an As-based layer . . . at a growth temperature equal to the first temperature, and thereafter furthering the growth while elevating the temperature to a second growth temperature.”

In the rejection, the Examiner asserts that Sato discloses the steps of subjecting a P-based layer to crystal growth at a first growth temperature and above the P-based layer, starting growth of an As-based layer at a growth temperature approximately equal to the first growth temperature. The Examiner’s assertion that Sato’s temperature for starting growth of the As-based layer (referred to as the “second growth temperature” below) is approximately equal to the first growth temperature is incorrect.

Sato states that the first growth temperature is between “450-700°C” (see col. 11, lls. 58-61). Sato further explains that the second growth temperature is “a high temperature of at least 750°C” (see col. 3, lls. 5-8). Accordingly, Sato discloses a temperature difference between the first growth temperature and the second growth temperature of at least 50°C-300°C. Those of ordinary skill in this art would not have interpreted temperatures that are at least 50°C different to be “approximately equal.” Rather, those of ordinary skill in the art would, as Sato states, have considered Sato’s second growth temperature to be a “high temperature” in comparison to the first temperature (Sato specifically states that the second high temperature is “contradictory to the requirement of low temperature growth of the GaInNAs active layer as noted previously” (col. 3, lls. 8-11)).

In addition, the Examiner alleges that it would be obvious to thereafter further the growth of the As-based layer while elevating the temperature to a higher growth temperature so that the oven can be operated continuously. The Examiner has provided no support for this assertion.

The Federal Circuit has repeatedly made clear that the PTO must provide documented evidence of what constitutes “common knowledge and common sense” to one of ordinary skill in the art. See in *In re Lee*, 61 USPQ2d 1430, 1433, 1434 (Fed. Cir. 2002) (“This court explained in *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697, that ‘deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is “basic knowledge” or “common sense”’. The Board's findings must extend to all material facts and must be documented on the record, lest the ‘haze of so-called expertise’ acquire insulation from accountability”). Here the Examiner has offered no record evidence of any kind to support his assertion that it would be known to elevate the temperature to a higher growth temperature “so the oven can be operated continuously.”

The Examiner’s assertion especially requires support in this case since the growth temperature is typically changed from one temperature to another during crystal growth by stopping the crystal growth process and, only after the growth temperature has been changed, restarting the crystal growth process. Nothing in Sato suggests the very different process suggested by the Examiner.

Since Sato fails to suggest or disclose “starting growth of an As-based layer . . . at a growth temperature equal to the first temperature, and thereafter furthering the growth while elevating the temperature to a second growth temperature” as claimed, the rejection of claims 11-16 should be withdrawn.

In view of the above, each of the claims in this application is in immediate condition for allowance. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and

authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing Attorney Docket No. 204552026210.

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Respectfully submitted,

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